Office-Supreme Court, U.S.
FILED
SEP 30 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 633

ANTHONY J. TRAVIA, JOSEPH ZARETZKI, PAUL R. SCREVANE, President of the City Council of the City of New York, MAURICE J. O'ROURKE, and JAMES POWER, Commissioners, Board of Elections, New York City, *Appellants,*

—against—

JOHN P. LOMENZO, Secretary of State of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, EUGENE H. NICKERSON, County Executive, Nassau County, FRANCIS X. O'ROURKE, Chairman, Board of Supervisors, Westchester County and ARTHUR CROMARTY, Chairman, Board of Supervisors, Suffolk County, and JOHN R. CREWS and THOMAS MALLEE, Commissioners, Board of Elections, New York City, *Defendants-Appellees,*

and

JOHN H. HUGHES and LAWRENCE M. RULISON, *Defendants-Intervenors-Appellees,*

and

WMCA, INC., R. PETER STRAUS, JOSEPH DEMAIO, EDWARD LIND, S. THOMAS DELANEY, EDWARD C. BROWN, JAMES J. McCAFFERTY, *Plaintiffs-Appellees.*

JURISDICTIONAL STATEMENT

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Defendants-Appellees,

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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The order appealed from and the opinion below are not reported and are appended hereto as Appendix A.

JURISDICTION

This is one of several appeals pending in this Court which relates to the apportionment of the Legislature of

the State of New York.* This present appeal and appeals No. 191 (*Travia* v. *Lomenzo*) and No. 449 (*Screvane* v. *Lomenzo*) involve orders of the United States District Court for the Southern District of New York which require the holding of an election for members of the New York Legislature on November 2, 1965, pursuant to Chapter 976 of the Laws of 1964, commonly known as Plan A. In *Matter of Orans,* 15 N. Y. 2d 339 (1965), the New York Court of Appeals held that Plan A contravened provisions of the New York Constitution which were entirely consistent with the United States Constitution.

This proceeding was initially brought by plaintiffs-appellees before a three-Judge panel of the United States District Court for the Southern District of New York to declare the apportionment of the New York Legislature in violation of the Fourteenth Amendment of the United States Constitution. In *WMCA* v. *Lomenzo,* 377 U. S. 633 (1964), this Court held that the New York apportionment did violate the Fourteenth Amendment and remanded this case to the District Court for further proceedings consistent with *Reynolds* v. *Sims,* 377 U. S. 533 (1964).

On May 24, 1965, subsequent to the remand, the District Court entered an order providing that an election of members of the New York Legislature shall be held on November 2, 1965 on the basis of the unconstitutional Plan A. This order was entered notwithstanding the fact that alternative proposals had been presented to the District Court which would have achieved full compliance with *both* the United States and New York Constitutions commencing January 1, 1966. Appellants appealed from this order on May 25.

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*The following appeals, now pending in this Court, also involve the apportionment of the New York Legislature: *Lomenzo* v. *WMCA* (No. 81); *WMCA* v. *Lomenzo* (No. 85); *Travia* v. *Lomenzo* (No. 191); *Screvane* v. *Lomenzo* (No. 449); *Matter of Orans* (No. 319).

Appellants hereby appeal from a subsequent order of the District Court entered on July 13, 1965. This most recent order was entered by the District Court in direct response to a July 9, 1965 order of the New York Court of Appeal in *Glinski* v. *Lomenzo,* 16 N. Y. 2d 27 (1965), enjoining the holding of a Plan A election in 1965.

The July 13 order here appealed from provides that

> "... all parties to this action, their agents, attorneys and servants, their successors and all other persons are hereby forever restrained and enjoined from interfering with the carrying out and execution by any and all New York State officers and election officials and their successors and all other persons of the order of this Court of May 24, 1965."

The effect of this order is to make it impossible for the courts of New York to create an apportionment for the 1966 New York Legislature which will comply with both the United States and New York Constitutions. For, under the July 13 order, any action in or by the New York courts pertaining to the apportionment of the 1966 Legislature invites a contempt citation by the District Court.

Appellants further appeal from the oral denial of the motion by appellants Travia and Zaretzki on July 13, 1965 to stay the May 24 order pending timely action on apportionment by the New York State courts.

Appellants' Notice of Appeal was filed with the Clerk of the United States District Court for the Southern District of New York on July 14, 1965.

Jurisdiction of this appeal is conferred by 28 U. S. C. § 1253. The following cases, among others, sustain the jurisdiction of this Court on this appeal: *WMCA* v. *Lomenzo,* 377 U. S. 633 (1964); *Hughes* v. *WMCA,* 379 U. S. 694 (1965); *Scott* v. *Germano,* 381 U. S. 407 (1965); *Reynolds* v. *Sims,* 377 U. S. 533 (1964).